

Subsidiary Legislation made under ss. 184(1)-(2), 184ZA(2) and 184B(2).

Proceeds of Crime 2015 (External Investigations in a Civil Context under the Strasbourg Convention or Warsaw Convention) Order 2024

LN.2024/155

Commencement

8.8.2024

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In the exercise of powers conferred on it by sections 184(1) and (2), 184ZA(2) and 184B(2) of the Proceeds of Crime Act 2015, and all other enabling powers, and for the purposes of implementing, in part, into the Laws of Gibraltar, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime signed in Strasbourg on the 8th November 1990 and the Council of Europe Convention on Laundering, Search, Seizure and the Confiscation of the Proceeds from Crime and on the Financing of Terrorism signed on the 16th May 2005 in Warsaw, the Government has made this Order-

**PART 1
PRELIMINARY**

Title.

1. This Order may be cited as the Proceeds of Crime 2015 (External Investigations in a Civil Context under the Strasbourg Convention or Warsaw Convention) Order 2024.

Commencement.

2. This Order shall come into operation on the day of publication.

Interpretation.

3.(1) In this Order-

““coercive measure” means where a request has been made under this Order and the Central Authority requires a warrant or order to provide the assistance sought;

“request” means request for assistance under the Warsaw Convention or Strasbourg Convention;

“offence” means a criminal offence which-

- (a) falls within the scope of the Strasbourg Convention or Warsaw Convention as applied to Gibraltar and the other state; and
- (b) is provided for under the laws of the requesting State and requested State in relation to a coercive measure;

“Strasbourg Convention” means the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime signed in Strasbourg on the 8th November 1990;

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“Strasbourg state” means a state or territory which has ratified or obtained extension of the Strasbourg Convention, and in the case of Gibraltar, it includes where Gibraltar has extension, or it is expected that extension will be obtained;

“Warsaw Convention” means the Council of Europe Convention on Laundering, Search, Seizure and the confiscation of the proceeds from crime and on the financing of terrorism signed on the 16th May 2005 in Warsaw;

“Warsaw state” means a state or territory which has ratified or obtained extension of the Warsaw Convention, and in the case of Gibraltar, it includes where Gibraltar has extension, or it is expected that extension will be obtained.

(2) For the purposes of this Order, the definitions in the Proceeds of Crime Act 2015 (External Investigations in a Civil Context) Order 2019 apply.

Scope of this Order.

4. This Order applies to-

- (a) investigations in a Strasbourg state or a Warsaw state, where a request is received by the Central Authority from either of these states; and
- (b) where applicable, investigations in Gibraltar where a request is sent by the Central Authority to a Strasbourg state or a Warsaw state, in relation to those investigations,

where those investigations fall within the description of external investigations as set out in Article 3 of the Proceeds of Crime Act 2015 (External Investigations in a Civil Context) Order 2019.

Application of Parts 1 to 5 of the Proceeds of Crime Act 2015 (External Investigations In a Civil Context) Order 2019.

5.(1) A request from a Strasbourg state or a Warsaw state to the Central Authority must comply with-

- (a) the provisions of the Proceeds of Crime Act 2015 (External Investigations in a Civil Context) Order 2019; and
- (b) the provisions of this Order.

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(2) A request sent from the Central Authority to a Strasbourg State or Warsaw state must comply with the provisions of Part 2 of this Order.

**PART 2
REQUESTS UNDER THE WARSAW CONVENTION AND STRASBOURG
CONVENTION**

Form of request.

6.(1) A request under this Order must, save as otherwise provided in paragraph (2), be in writing, or, where possible, by any means of communication (which includes in electronic form) capable of producing a written record under conditions that allow the Central Authority to establish the authenticity of a request.

(2) In a case of urgency, a request may be made and transmitted in oral form, and if made orally, must be confirmed by a means that is capable of producing a written record within 48 hours from receipt of the oral request.

(3) The written records referred to in paragraphs (1) and (2) must be retained by the Central Authority.

Content of request.

7.(1) A request by a Strasbourg state or a Warsaw state must specify-

- (a) the object and reason for the request;
- (b) the authority making the request or carrying out the investigation;
- (c) the relevant facts of the case in the investigation or proceeding, except in a request for service of documents alone;
- (d) the identity, date and place of birth, nationality and location of the person, or seat in the case of a legal person, of
 - (i) any person from whom evidence is sought;
 - (ii) a person to be served;
- (e) a description of any procedure to be followed in executing the request;

- (f) the need for the measures requested;
 - (g) where the assistance involves coercive action -
 - (i) the text of the statutory provisions or a statement of the relevant applicable law of the requesting State; and
 - (ii) confirmation that the assistance sought or similar assistance could be taken by the requesting State under their domestic law;
 - (h) the location of the information or evidence, and its connection with the person or persons concerned, any connection with an offence, as well as any available information about other persons and interests in any information or evidence;
 - (i) in the case of requests for information on bank accounts -
 - (i) the reasons that the information or evidence is likely to be of substantial value to the investigation or proceeding;
 - (ii) the grounds on which it is suspected that the bank in the requested State holds the account, and to the widest extent possible, which bank or accounts may be involved;
 - (iii) any additional information that is available which may facilitate the execution of the request.
 - (j) in the case of –
 - (i) requests for information on bank transactions; or
 - (ii) the monitoring of bank transactions,

the reasons that the information is likely to be of substantial value to the investigation or proceeding.
- (2) A request for the information or evidence referred to in paragraphs (1)(i) and (j)(i) which involves a financial institution that is not a Bank may be accepted by the Central Authority provided the requesting State is able to reciprocate.

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(3) All requests should be made in English or accompanied by a certified translation into English and any supporting documentation, if not in English, must be accompanied by a certified translation into English.

(4) Any request or documents transmitted for the purposes of this Order do not require any form of legalisation.

Transmission and urgent requests.

8.(1) The Central Authority must communicate directly with the central authority of the requesting State for the purposes of a request under this Order.

(2) In a case of urgency, requests and communications-

- (a) may be sent by any authority recognised by the requesting State to an appropriate officer, and a copy of the request or communication must be provided by this authority to the Central Authority at the same time; or
- (b) may be sent through the International Criminal Police Organisation for forwarding to an appropriate officer.

Spontaneous exchange.

9.(1) The Central Authority may exchange information or evidence with any authority, recognised by the government of a Warsaw state or Strasbourg state concerned as the appropriate authority for receiving information or evidence, in connection with an offence where it may assist that state in commencing or carrying out investigations or proceedings, or it might lead to a request under this Order.

(2) The Central Authority may receive from any authority recognised by the government of a Warsaw state or Strasbourg state, any information or evidence in connection with an offence where it may assist an authority in Gibraltar in commencing or carrying out investigations or proceedings, or it might lead to a request under this Order.

Service of documents.

10.(1) An authority in a Warsaw state or Strasbourg state outside Gibraltar may send a document to the Central Authority, together with-

- (a) the statement and advice referred to in paragraphs (3)(a) and (b); and

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- (b) a request for the document to be served on a person in Gibraltar.
- (2) The Central Authority may cause the document to be served by post or, if the request is for personal service, direct the Commissioner of Police to cause it to be personally served on the person to whom the document is addressed.
- (3) The document must be accompanied by-
- (a) a statement explaining the effect of the document;
 - (b) advice as to the legal remedies available with the process under the law of the state where it was issued or made.
- (4) A document may be issued or made by a court in Gibraltar for the purpose of an investigation or proceeding in Gibraltar, and the person to be served is outside Gibraltar in a Warsaw state or Strasbourg state.
- (5) Where the document is to be served outside Gibraltar and the person at whose request it is issued or made believes that the person on whom it is to be served does not understand English, they must–
- (a) inform the court referred to in paragraph (4) of that fact; and
 - (b) provide the court with a copy of the document, or of so much of it as is material, translated into an appropriate language.
- (6) A document served outside Gibraltar requiring a person to appear as a party or attend as a witness must include the information referred to in paragraph (3).
- (7) For the purposes of this Order, “document” means-
- (a) documents initiating or relating to court proceedings, including, but not limited to, summons, notices of hearings and adjournments;
 - (b) witness summons;
 - (c) judicial orders and judgments;
 - (d) judicial documents relating to the enforcement of any judicial order or judgment.

Grounds of refusal.

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11.(1) If a request is received by the Central Authority from a Strasbourg state or a Warsaw state, the Central Authority may refuse to execute that request if-

- (a) the request is incompatible with Gibraltar law;
 - (b) the request is likely to prejudice the sovereignty, security or other interests of Gibraltar;
 - (c) the request is disproportionate in relation to the offence, or the sum involved in the request is minor;
 - (d) in relation to a coercive measure, that measure would not be available under Gibraltar law in a domestic case;
 - (e) the request proposes a measure that would not be permitted in the requesting State;
 - (f) the request would infringe the principle of ne bis in idem;
 - (g) the offence to which the request relates would not be an offence under the law of the requested State if committed within that State;
 - (h) the proceeding or the investigation in the requesting State is subject to a legal challenge in that State;
 - (i) the offence involved in the request is a political offence or fiscal offence;
 - (j) the offence in the request does not justify a coercive measure in the requesting State.
- (2) If a request is received by the Central Authority from a Warsaw State alone which involves a political offence or fiscal offence, the Central Authority must not refuse to execute that request if it concerns an offence of terrorism or the financing of terrorism.
- (3) Where the Central Authority refuses the request, reasons must be provided to the requesting State.
- (4) Where dual criminality is required prior to any assistance being provided to a requesting State, this requirement is satisfied where the requesting State and Gibraltar both criminalise the conduct underlying the offence, which is the subject of the request.

Postponement.

12.(1) The Central Authority may postpone acting on a request where acting on it may interfere with an investigation or proceeding.

(2) If it is likely that a request is to be refused or postponed, the Central Authority must consult the requesting State to consider whether the request may be granted subject to any terms and conditions as it deems necessary, and, if the requesting State accepts those terms and conditions, the request may be acted on subject to those terms and conditions.

Additional information.

13.(1) If a request–

- (a) does not comply with this Order; or
- (b) the information provided by the requesting State is not sufficient to enable the Central Authority to consider or deal with the request,

the Central Authority may proceed to take any measures it can to grant the request, but may–

- (i) request that the requesting State amends the request or provides additional information; and
- (ii) set a time limit for the receipt of an amended request or additional information.

(2) The Central Authority may be asked by the requested State to amend a request for assistance or provide additional information within the time-period stipulated by that requested State.

(3) Requests in draft form–

- (a) may be sent to the Central Authority by the requesting State in order to determine the sufficiency of information in the request;
- (b) may be sent by the Central Authority to the requested State for the same purpose as set out in subparagraph (a).

Confidentiality.

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14.(1) Except to the extent necessary to execute a request, the fact and substance of a request received by or made by or through the Central Authority, must not be disclosed by any person, other than in the course of the exercise of their duties.

(2) The Central Authority may make any reasonable procedural arrangements and impose any reasonable safeguards regarding any request as it considers appropriate to maintain the confidentiality of that request.

(3) The Central Authority may ask the requested State to make any reasonable procedural arrangements and impose any reasonable safeguards regarding any request received from Gibraltar, as it considers appropriate, to maintain the confidentiality of that request in relation to the exchange of spontaneous information under Article 9.

(4) Where in relation to a request, it is not possible to comply with the requirement of confidentiality set out in paragraph (1)-

- (a) the Central Authority must promptly inform the requesting State, where the Central Authority receives a request;
- (b) the requested State must promptly inform the Central Authority, where the Central Authority has sent a request.

Limitation on use.

15.(1) Any evidence or information obtained from the Central Authority by a Warsaw state or Strasbourg state may not, without the prior consent of the Central Authority, be used or disclosed for any other purpose other than that specified in the request.

(2) When the evidence is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it must be returned to the Central Authority, unless the Central Authority indicates that its return is not necessary.

(3) Where the requesting State intends to use evidence or information obtained in accordance with this Order for a different purpose to that stated in the request, a formal request for the Central Authority's prior consent must be made in writing with the following information-

- (a) the reference number for the request;
- (b) details of the evidence to be used or shared;
- (c) the manner in which the evidence will be used or shared;

(d) the relevance and need for the evidence to be shared or used.

(4) Where the Central Authority gives its consent to a request under paragraph (3), it may impose any terms and conditions as it deems appropriate for its use or disclosure.

(5) Notwithstanding the provisions in this Article, the Central Authority may execute a request on the condition that the information or evidence must not be used without its consent for any other purpose.

Continuing the measures.

16.(1) The requesting State must provide any information or evidence to the Central Authority that may support an application for a variation or setting aside of any order made by the court under this Order.

(2) The Central Authority must give the requesting State the opportunity of providing reasons in support of any application to keep any order made by the court in place.

(3) The Central Authority must provide any information or evidence to a requested State that may give rise to a variation or setting aside of any order made under a request to that requested State by the Central Authority.

Multiple requests.

17.(1) Where the Central Authority receives more than one request in relation to the same information or evidence, this must not impede the Central Authority from dealing with those requests.

(2) The Central Authority must consult the requesting State or states where it receives more than one request in relation to the same information or evidence.

Progress of requests.

18.(1) The Central Authority must inform the requested State of-

- (a) the action taken on a request;
- (b) the outcome of a request;
- (c) a decision to refuse, postpone or impose conditions in relation to a request; or

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- (d) any circumstances which make the taking of any step or action in the execution of a request impossible, or likely to be significantly delayed; or
- (e) any provisions in law which would lead to a lifting or setting aside of any orders made by the court.

(2) The requesting State must inform the Central Authority of any fact that would render any order made by the court wholly or partially unenforceable or impossible, or where any action is no longer justified.

Requests against body corporates and deceased persons.

19.(1) Assistance under this Order must not be refused on any of the following grounds-

- (a) a body corporate is the subject of an investigation or proceeding;
- (b) where a liquidator or administrator has been appointed under the Insolvency Act 2011 or a voluntary liquidator has been appointed under the Companies Act 2014 after a request under this Part has been granted;
- (c) a person dies following the acceptance of a request under this Part,

unless any action sought in the request is deemed to be contrary to the fundamental principles of Gibraltar law.

(2) The terms “body corporate” includes a limited liability partnership.

Costs.

20.(1) Subject to paragraph (2), the costs of executing a request received from a requesting State must be borne by the Central Authority unless otherwise agreed.

(2) Where expenses of a substantial or extraordinary nature are or will be required to execute the request, the parties must consult each other in advance-

- (a) to agree the conditions on which the request is to be executed; and
- (b) the manner in which the costs must be borne.